comments, program producers no longer need a government rule to guarantee them access to viewers. There is no more so-called "network dominance" -- no "three network funnel" constraining the creation and distribution of diverse programming. Proponents of PTAR argue that independent producers cannot survive without the assurance provided by PTAR that they can launch their programs on Top 50 market affiliates. (Notice, par. 34). This argument is preposterous given the number of outlets and program services competing for producers' output. NBC, CBS and ABC continue to compete vigorously against each other for attractive programming. Fox now programs 15 hours of prime time entertainment programming a week, and spent nearly $700 million in 1994 on entertainment programming. (Economic Analysis, App. G). The new United Paramount Network is offering 4 hours of prime time programming a week and expects to expand to five nights over the next few years, WB Television launched with two hours of prime time entertainment programming. (Economic Analysis, pp. 15-16). Over 100 cable networks purchase dozens of hours of original programming each year. (Economic Analysis, App. B; Attachment A to these Comments).

The Commission has concluded that access to the network distribution system is no longer the <u>sine qua non</u> of success.[13] In

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[13] In the fin/syn proceeding, the Commission rejected the argument that network exhibition is necessary for the successful distribution of original entertainment series. <u>Fin/Syn Second Report & Order</u>, <u>supra</u>, 8 FCC Rcd at 3306.

terms of "gatekeepers" between the creative producer and the audience, a program is no less "independent" if it is distributed by NBC than if it is distributed by the FOX Network, by HBO or in a King World syndication package.

Moreover, the Economic Analysis demonstrates that there will still be ample numbers of both independent and affiliated stations eager to purchase first-run programming if PTAR is eliminated. The number of independent stations has increased seven-fold since 1970, and there are now more than enough unaffiliated stations in both large and small markets to be able to successfully launch a first-run show.

But beyond sheer numbers, the economics also support the view that first-run syndication is not dependent on PTAR. If PTAR is eliminated and affiliates in the major markets begin to broadcast off-network programming during access, there is every indication that independents will counter-program with first-run shows. Figure 15 on page 50 of the Economic Analysis indicates that during the current network portion of prime time, when the vast proportion of network affiliates are showing network programs, 39% of non-Fox independents in the Top 50 markets are offering first-run programs. The strength and popularity of first-run syndicated programs today is also demonstrated by the fact that 34% of the programming hours broadcast by independent stations in the Top 50 markets during access consists of first-run shows. (Economic Analysis, Figure 19, p. 56). Thus even though they can broadcast off-network programming without competition from affiliates in their markets, many Top 50 independents don't even take advantage of the rule, and instead choose to run first-run programming which is more popular or economically attractive.

The Notice asks whether carriage on independent stations (many of which are UHF) will be sufficient to support an adequate supply of "independently" produced programs, since these stations have typically operated at a "technological disadvantage," i.e., the so-called UHF handicap. (Notice, par. 35). Appendix C of the Economic Analysis demonstrates that the so-called UHF handicap has been greatly reduced, largely due to the carriage of such stations on cable, and that UHF independent stations in particular no longer labor under any technological disadvantage.

There is also every indication that first-run programming will continue to be the product of choice for many network affiliates, even if the limitation against a fourth hour of network programming is lifted. According to the analysis contained in Appendix H, first-run syndicated programming accounted for 54% of the access program hours broadcast by three-network affiliates in the bottom 150 markets, which are not subject to PTAR. Thus, affiliates will select the programming that is the most popular for its audience, regardless of its source. In the final analysis, the program itself will drive the marketplace. The Commission should not artificially hamstring this process by favoring one kind of program and handicapping another.

In sum, there is no danger that "an entire segment of program supply could wither without PTAR." (Notice, par. 34). Those that argue there would be a significant reduction in program suppliers without the rule are merely trying to preserve the competitive advantages they have enjoyed for the last 25 years.

C. Elimination of the Fin/Syn Restrictions Does Not Justify Continuation of PTAR

The elimination of the remaining fin/syn restrictions does not alter this conclusion. PTAR and fin/syn were adopted simultaneously for the same purpose: to curb perceived "network dominance" and correct a market disfunction the Commission believed it caused. It is now beyond dispute that NBC, ABC and CBS do not "dominate" program production and distribution, and cannot adversely affect the highly competitive program supply marketplace. The Commission's determination to that effect in the fin/syn proceeding was affirmed by the 7th Circuit.[14] That correct

[14] As the court acknowledged, "By 1991,...[the Commission's] fears about the consequences of unleashing the networks to compete with independent producers, syndicators, and stations had become almost entirely chimerical." Capital Cities/ABC v. FCC, 29 F3d.309, 312 (7th Cir. 1994).

determination should not be disturbed in this proceeding. Elimination of the fin/syn restrictions will not again raise the specter of "network dominance." In today's competitive environment NBC, ABC and CBS cannot, and never will, control the programming production or distribution market. Nor does the demise of fin/syn regulations provide new justification for retention of PTAR.

We have already debunked the notion that the three networks act as a "filter" between producers and viewers that constrains the development of diverse sources of programming. The emergence of three new broadcast networks and dozens of basic and pay cable networks has, of course, resulted in far greater opportunities for producers than anything accomplished by PTAR. As we will discuss in the next section, NBC, CBS and ABC do not control the programming choices of their affiliates in a way that distorts competition in the marketplace. There is no evidence that any network will either favor its affiliates or force them to carry syndicated programs they don't want once fin/syn sunsets. In terms of "safeguarding" independent stations' access to syndicated programs, there is no evidence that networks will fail to sell their programs to the highest bidder; in fact, the evidence shows that was their practice prior to the adoption of fin/syn.[15]

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[15] As the 7th Circuit noted, "If a network refused to sell broadcast rights to willing buyers -- especially to its most willing and eager buyers...it would lose revenues, thus sacrificing a bird in the hand for a speculative

The Commission's own analysis in the fin/syn proceeding and the evidence presented in this rulemaking compel only one conclusion. Both the fin/syn rules and PTAR are unnecessary and counterproductive, and both should be eliminated to restore competition and enhance diversity in the television marketplace.

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bird in the bush consisting of a possible weakening of competition from independent stations." Capital Cities/ABC v. FCC, supra, 29 F.3d at 312.

IV. NETWORKS DO NOT DICTATE AFFILIATE PROGRAMMING CHOICES

A second goal of PTAR was to reduce the networks' role in dictating their affiliates' programming choices. In 1970, the Commission thought that affiliates were dependent on networks as the major source of programs, and needed protection against their power. The rule was intended in part to give affiliates greater freedom in choosing programs, thus increasing the chances that the programs appearing on affiliates would better reflect true viewer preferences. NBC submits that the Commission's concern about network power over affiliates was unfounded in 1970 and certainly has no basis today. Ironically, however, PTAR not only has failed to achieve the Commission's stated objectives, but has had the opposite effect on station choice and viewer welfare.

In 1970, the Commission proceeded on a premise that was flawed even then -- that the networks were able to "dictate" affiliate program choices, forcing them to broadcast programs that they did not want to carry and that their viewers did not want to see. This theory misapprehends the nature and efficiencies of the network-affiliate relationship. A network and its affiliates <u>both</u> derive benefits from the relationship. Network programs are cleared because network programming is generally high quality and popular, and therefore attracts a larger audience than an alternative program the station could obtain on its own in the marketplace.

When viewers prefer high-quality network programs, affiliates usually find them more cost-effective in generating audiences. It is therefore viewer preferences and affiliate self-interest, not network "power," that results in high clearances during prime time. (Economic Analysis, pp. 28-31).

Almost 15 years ago, the Commission's Network Inquiry Special Staff found that the network-affiliate relationship was essentially a "business partnership," and that the networks had no particular power over their affiliated stations. The NISS final report stated:

> [E]conomic factors are the dominant explanation of the decision to carry network programs. Nor is there anything sinister about this. A station's decision to carry a popular program undoubtedly provides substantial benefits to viewers in its community. Network Inquiry Staff Report, Vol. II, p. 288 (1980).

If networks did not have the power to dictate affiliate program choices when the NISS report was issued in 1980, they certainly do not have such power today. As the Notice acknowledges, the relative position of the networks and their affiliates has changed dramatically. This has occurred for several reasons, and is demonstrated by the following facts:

First, affiliates now have many other programming options, including the wealth of first-run programs available in the marketplace. More significant, there are one full-fledged and two upstart networks vying for affiliations. Since May, 1994, 68 stations have switched network affiliation. Of these stations, 21 switched from one of the three original networks to FOX, affecting 37 markets. According to press reports, in addition to financial incentives offered by Fox to persuade stations to switch, the three networks will pay $200 million or more in additional station compensation to maintain their distribution base. (Economic Analysis, pp. 14-15). All this demonstrates that to the extent the networks allegedly had the upper bargaining hand 25 years ago, today competition and other marketplace changes have clearly shifted the balance in favor of the affiliates.

Second, the inability of NBC, ABC or CBS to dictate affiliate program choices is evident from the fact that stations frequently choose not to clear network programming. As Appendix D to the Economic Analysis demonstrates, while clearances in prime time have remained high, network programs have a much lower clearance in non-prime time dayparts. Moreover, Appendix D overstates the ability of networks to clear programs outside of prime time, because it counts delayed as well as live clearances. Thus, NBC obtains only 22.5% and 16.2% live coverage for each of its two daytime entertainment shows, and reaches total clearance levels of 82.6% and 62.5% only by either allowing stations to air the shows whenever they want, or by placing them on non-affiliates in markets where NBC's regular affiliate does not clear. Even NBC's more popular afternoon soap operas enjoy live clearance levels of only 72.8% and 69.2%. If NBC had the power to "force" affiliates to clear, the Network would insist on 100% live clearance. Obviously, we do not have that power, and must accept that many of our affiliates want to clear these programs in different time periods, if at all.

Appendix D also demonstrates that networks have been able to maintain acceptable clearances in non-prime time dayparts only by decreasing the number of hours they offer. Since 1977, the aggregate number of hours offered to affiliates by the three networks has declined by a total of 25 hours per week. This decline reflects the affiliates' decision to choose alternative programming, which they deemed to be more desirable than what the network had to offer. If the networks could "control" their affiliates program choices, they could have continued to "force" them to clear programs they did not want. Instead, the networks lost the competition and gave up the field to other programmers.

PTAR has never been and is not today necessary to protect affiliates from so-called network power. In terms of the goals the rule was trying to achieve, it is clearly counterproductive. The rule in fact prevents stations from exercising precisely the judgments that are at the core of licensee decision-making and programming discretion. Top 50 market affiliates are prohibited by regulation from choosing from as many competing sources of programming as the market will bear, and from selecting the programs they believe will best serve their viewers. If station choice was restored, and affiliates were given truly unrestricted freedom to choose from among all programs competing in the marketplace, source diversity -- the ultimate goal of PTAR -- is likely to increase.

In sum, the enforced "freedom" imposed by PTAR in fact prevents major market affiliates of NBC, CBS and ABC from choosing the programs that best serve their stations and their local audience and compels them to show less desirable programming. As a result, affiliates' choices among program sources have been reduced and viewers have been denied the programs they most want to see. The government should not be choosing winners and losers in the programming market by constraining station choices in this way. The public interest would be far better served if stations were truly free to program their stations as they see fit.

V. INDEPENDENT STATIONS NO LONGER NEED A GOVERNMENT-IMPOSED COMPETITIVE ADVANTAGE

Although it was not one of the original purposes of PTAR, over the years the rule has also been justified as a means to strengthen independent stations. The Notice asks whether PTAR is still necessary to protect these stations and thereby ensure outlet diversity. The answer is clearly no.

A. PTAR Is Not Responsible For The Growth Of Independent Stations

At the outset it is important to point out that there is no evidence that PTAR was ever responsible for the growth of independent stations. The dramatic increase in the number of independent stations did not occur until the late 1970's -- several years after the imposition of PTAR restrictions, and was caused by marketplace factors having nothing to do with PTAR.

The first factor was the dramatic increase in television advertising revenues, which took off in 1976, after a multi-year economic recession. After several years of single digit growth, television advertising revenues increased by 27% in 1976 and held at double digit increases for the rest of the decade. In the 1980's television advertising more than doubled, rising from $10.4

billion in 1980 to $24 billion in 1989.[16] Independent stations rode the crest of this huge surge in television advertising expenditures. According to FCC Financial Data, between 1970 and 1975 the compound annual growth rate of independent stations' revenues was only 10.2%. But in 1976, independents' revenues jumped a whopping 46% and grew at a CAGR of nearly 22% for the rest of the decade. In absolute terms, independent stations' revenues nearly tripled from $347 in 1975 to $930 million in 1980.

The other single most important factor in stimulating the explosion of independent stations has been the growth of cable. As Attachment B to these comments clearly demonstrates, the upward trend in the number of independent stations precisely tracks the upward trend in cable penetration. Cable carriage has significantly reduced the handicap that UHF stations were thought to suffer when PTAR was adopted. (Economic Analysis, App. C).

B. Independent Stations Do Not Need The Government-Imposed "Competitive Advantages" Afforded By PTAR

Even if PTAR was instrumental in fostering the growth of independent stations, there is no evidence that continuation of the rule is necessary to protect what is now a strong and competitive segment of the industry. The "infant industry" argument that independent stations should be protected from competition made

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[16] Estimates based on FCC data; Ernst & Young; Television/Radio Age; Television Bureau of Advertising; and Paul Kagan Associates.

little sense in 1970 and makes absolutely no sense today. Data contained in the Economic Analysis demonstrate that independent television stations are numerous and competitively strong, and that there are many programming sources available to independents. They are clearly no longer "infants."

Independent stations are served by a vibrant first-run syndication industry. Moreover, most so-called "independent" stations are now affiliates of Fox or one of the new national broadcast networks. Fox, United Paramount Network and WB Television currently are affiliated with 345 stations -- nearly 80% of all stations that are not affiliated with NBC, CBS or ABC. In the Top 50 markets, 56% of "independent" stations are affiliated with one of these networks. (Economic Analysis, pp. 15-16; Electronic Media, January 16, 1995, p. 5). Some industry analysts have estimated that in 4 years only 14 true "independent" stations, with no network affiliation, will remain.[17]

PTAR insulates all independent stations from competition, regardless of their competitive and economic status. There is no public policy justification for protecting successful independent stations, particularly highly profitable independent VHF stations and "independent" stations affiliated with the FOX Network, who

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[17] The New Yorker, March 6, 1995.

continue to enjoy the benefits of PTAR. Much of the cost of protecting these independent stations falls on affiliates of NBC, CBS and ABC, some of which are UHF stations that are economically weaker than the independents protected by the rule. (Economic Analysis, pp. 52-53). There is no longer any justification for a regulation that indiscriminately favors one set of broadcast stations over another.

Nor is there any reason to retain a government rule that essentially subsidizes purchases of off-network programs by independent stations by forbidding network affiliates from bidding against them. Independent stations will not be bereft of programming choices once PTAR is repealed. As discussed above, in the event Top 50 affiliates are more successful than independents in acquiring off-network programs for the access period, there is a wealth of popular first-run programming for the independent stations to choose from. Indeed, many independents are already selecting first-run programming for broadcast in access. Ultimately, it is the attractiveness of the program, not the distribution outlet that will determine success or failure in the marketplace. Since there is no reason to assume that there will be a dearth of attractive programming for independents without PTAR, there is no reason to fear that their competitive strength will be diminished, or that the new networks they are affiliated with will not be successful.

C. Any Benefit PTAR Has Conferred On Independent Stations Is Outweighed By The Losses It Has Inflicted On Consumer Welfare, Competition And Diversity

There may be a marginal independent station that receives a competitive boost from a rule which handicaps the three-network affiliates in its market. But this is achieved at the cost of preventing the broadcast networks and their affiliates from realizing the efficiencies inherent in the network distribution system. Any competitive advantage the rule may give such marginal independents is more than offset by the deleterious effect of the rule on competition and viewer welfare.

The Economic Analysis provides stark evidence that the rule, in fact, deprived many viewers of the programs they most wanted to see. When PTAR was first implemented, the Economic Analysis indicates that 1.25 million households on average turned off their television sets when the programming they preferred was no longer offered during the access hour. Today, Top 50 market affiliates' share of the viewing audience is lower during access than it is during the rest of prime time. This may indicate that viewers are watching programming other than what they would prefer to watch, or are choosing not to watch television at all because their preferred option is unavailable. The Economic Analysis indicates that over the past 25 years, the lost viewing attributable to PTAR translates into consumer losses in the billions of dollars. (Economic

Analysis, pp. 31-42).

PTAR also reduces competition in a number of ways:

- PTAR puts Top 50 affiliates of NBC, ABC and CBS at a competitive disadvantage relative to affiliates of FOX, UPN and WB Television, which can freely purchase programming in the marketplace and exhibit it at any time of day, limited only by their own business and programming judgments.

- NBC, CBS and ABC are at a competitive disadvantage relative to FOX and the other "emerging networks" because once a program appears on one of the original networks, it cannot be sold to Top 50 affiliates for the lucrative access period. This severely limits the economic potential for these programs, and makes the original three networks less attractive purchasers of original entertainment programs.

- PTAR prevents NBC, ABC and CBS from competing effectively as producers of first-run syndicated programs. Because their productions are banned from access, when license fees and barter revenue tend to be highest, it is simply less economic for a network or its owned stations to produce for first-run. This has the effect of limiting the number of production sources in the access period specifically, and in the first-run marketplace generally.

The competitive advantages PTAR confers on the FOX Network are particularly egregious given its competitive strength in the marketplace. FOX now provides 15 hours of programming in prime time and 29 hours per week overall. FOX currently reaches 98.7% of the national audience over 199 affiliates, and has an affiliate in each of the Top 50 markets. (Economic Analysis, pp. 14-15). FOX is fully competitive with the original networks in the program purchasing marketplace. The FOX Network spends approximately the same amount per hour of prime time programming as NBC, CBS or ABC, and recently outbid CBS for the NFL football package for $1.6 billion. As noted above, FOX successfully wooed 21 affiliates away from one of the three original networks. There is no longer any justification for giving FOX regulatory and competitive advantages vis a vis NBC, CBS and ABC.

As outlined in the Economic Analysis, PTAR also reduces competition in many other aspects of the program production and distribution marketplace (pp. 42-47). By constraining competition in so many ways the rule hurts the ability of broadcast television to compete against new media such as cable and home video. These new distribution outlets and sources have obviated the need for a regulation like PTAR. But nothing in the rule protects independent stations from these formidable competitors, or from nascent distribution media like DBS, or from those waiting in the wings, like the phone companies and video dial tone services. The regulatory shackles should be removed from <u>all</u> free over-the-air television so it can continue to compete in the multichannel environment.

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These Comments and the Economic Analysis have demonstrated that marketplace conditions no longer support retention of PTAR.

The rule has not strengthened or fostered new production sources for prime time programming; it has unduly restricted affiliate programming choices; and it is no longer necessary or fair to give independent stations "competitive advantages." Nor can "diversity" concerns justify PTAR. PTAR has done little to affect the number of outlets for video programming. The increase in those outlets has been driven by technological and marketplace changes, not regulatory policy. As discussed in detail above, PTAR has not stimulated the development of diverse production sources. There are fewer producers of prime time programming today than there were before the rule was adopted.

Finally, PTAR has caused no demonstrable increase in content or viewpoint diversity. The types of shows typically shown in access -- game shows and magazine shows -- were developed before the rule and can be seen in other dayparts. Moreover, for the most part access shows are stripped, i.e., the same program airs each weekday night, whereas when the networks programmed the time period they presented a different show every night. PTAR has not succeeded in increasing the amount of news or public affairs programs on NBC, CBS or ABC affiliates during prime time. Only 2% currently offer news or public affairs programming during the second half-hour of access.[18]

In short, PTAR is unnecessary, anticompetitive and counterproductive in terms of the Commission's diversity goals. NBC therefore urges its immediate repeal.

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[18] 43% of the three networks' Top 50 affiliates run network news during the 7:00 - 7:30 time period, but that was the case before PTAR and cannot be attributed to the rule. (Economic Analysis, p. 61; App. H).

VI. OTHER ISSUES: TRANSITION MEASURES, DEFINITIONS AND EXCEPTIONS

A. Transition Measures: The Commission Should Immediately Allow Top 50 Affiliates To Broadcast Off-Network And Network-Produced First-Run Syndicated Programs During The Fourth Hour Of Prime Time

The record supports immediate repeal of PTAR, but if the Commission determines that total deregulation should be phased in, NBC recommends the following transitional measures. PTAR should immediately be modified to allow affiliates in the Top 50 markets to acquire programming in the open marketplace from any distributor or production source, except from a network pursuant to an ongoing affiliation agreement. This modification would temporarily retain the three-hour limit on the number of hours of programming an affiliate could accept from a national network programming service. However, affiliates could immediately begin to acquire off-network programs, and first-run syndicated programs produced by a network or network owned station production entity, for broadcast in the access period.

NBC strongly urges the Commission not to simply remove the off-network provision of PTAR without modifying the 1991 "clarification" of the rule that prohibits network first-run syndicated productions during access. To eliminate only the off-network provision would provide regulatory relief primarily for the major Hollywood studios who produce programs for the three networks. These companies already dominate the access hour and the syndication market generally.[19] Eliminating only the off-network restriction would prevent three additional program producers -- NBC, CBS and ABC -- from competing against these studios; allowing network first-run productions to compete in the syndication marketplace for clearance in access would enhance both competition and diversity during the fourth hour of prime time.

There is no basis for concern that network first-run syndicated productions would have some marketplace advantage. As noted above, networks do not "control" their affiliates' programming choices, and the balance of bargaining power between the original networks and their affiliates has shifted in the affiliates favor. Network productions would have to be sold market-to-market just like all other first-run shows. Most Top 50 affiliates are owned by large group owners such as Gannett, Hearst, Post-Newsweek and Scripps-Howard. These powerful companies could not be forced by a network to buy first-run programs they don't want. Moreover, these companies typically own stations affiliated with two or even all three of the original networks. They are unlikely to agree to acquire a first-run program because it is

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[19] As noted above, 85.3% of the programs broadcast during the access hour by Top 50 affiliates are produced by an MPAA studio. The MPAA studios also control 53.5% of the off-network and first-run syndication market. Paul Kagan, <u>TV Program Stats</u>, October 31, 1994, p. 8.

offered by one of the networks with which some but not all of their stations are affiliated. Thus, network produced first-run programs would have to compete on an equal footing with all other programming available to stations in the marketplace.

This modified PTAR scheme should remain in place for no more than three years, sufficient time to allow the marketplace to adjust and to allow the Commission to monitor and assess the impact of relaxation of PTAR on the industry. At the end of the three year period, the balance of PTAR should sunset, absent an affirmative determination by the Commission that the public interest would be harmed by complete repeal.

B. Definition Of A Network

NBC urges the Commission to repeal PTAR in its entirety. To the extent any aspect of the rule remains in place, however, it ought to apply to all broadcast programmers that offer a prime time network programming service to 50% or more of the country. Any national programming service that meets this coverage threshold should be considered a "network" for purposes of PTAR, and affiliates of any "network" should be prohibited from accepting more than three hours of "network" programming in prime time.

The Commission currently defines a "network" for purposes of

PTAR as any entity providing more than 15 hours of prime time programming per week to interconnected affiliates that reach at least 75% of television households nationwide. 47 CFR Sec. 73.662(f). Under this definition, the FOX Network, UPN and WB Television networks all escape the effects of the rule. The definition has the perverse effect of forcing these newer networks to limit their programming offerings to 15 hours in order to avoid the restrictions of the rule. Thus contribution of additional broadcast networks to competition and diversity is limited by government fiat.

The answer is to get rid of the rule entirely, but to the extent it persists, there is no reason any longer to handicap only three out of six broadcast network competitors in the marketplace. Particularly with respect to FOX, this is an unfair and unjustified result. The competitive strength of the FOX Network was described in Section V of these Comments. There is no basis for continued disparate regulatory treatment of this formidable competitor. As Judge Posner pointed out in his second fin/syn opinion,

> With the rapid growth of the Fox network -- its well-publicized "raid" on CBS, which netted it eight stations affiliated with that once-mighty network (Fox already having wounded CBS by wresting NFL football broadcast rights from it)...--the exemption of Fox from these restrictions increasingly seems arbitrary. Capital Cities/ABC v. FCC, supra, 29 F.3d 315.

Judge Posner's point is no less valid with respect to FOX's exemption from PTAR. UPN and the WB Television, while newer and smaller, are owned by large vertically-integrated studios who are major suppliers of programming to NBC, CBS and ABC, and who are also major suppliers of first-run and off-network syndicated programs.[20] Thus, Fox, Paramount and Warner already "control" a significant portion of broadcast station time. If the purpose of PTAR is to foster new sources of programming, there is no reason, then, that their networks should be permitted to fill more than three hours of their affiliates' prime time hours, when NBC, CBS and ABC are prevented by PTAR from doing so.

C. Exempted Programming

If the Commission decides to retain PTAR it should also retain the exemptions that were carved out in 1975 for children's, public affairs and documentary programs. However, it should modify the rule so that the exemptions extend to all seven nights of the week. Currently, the exemptions do not apply on Saturdays. Even if the Commission retains the Saturday exception for programs furnished to an affiliate under a network affiliation agreement, it should at a minimum permit affiliates in the Top 50 markets to broadcast off-

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[20] Paramount and Warner Brothers account for 18% of the entertainment series program supplied to NBC, CBS and ABC during the 1993-94 broadcast season. (Economic Analysis, App. E). Collectively, these two studios control 31% of the first-run syndication market and 22% of the total syndication market. (Paul Kagan, TV Program Stats, September 30, 1994, p. 5 and January 23, 1995, p. 3).